IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.Rev.Pet.No. 1186 of 2006()

CRA.801/2004 of ADDL.SESSIONS COURT, KOTTAYAM
CC.299/2004 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

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REVN. PETITIONER: APPELLANT/ACCUSED.

K.SALIM, MADAMPAKATTU HOUSE,
HOUSE NO.471/4, PALLOM P.O. KOTTAYAM NOW
RESIDING AT SHAHUL MANZIL,MANIKUNNAM.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS: COMPLAINANT AND STATE.

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1. E.KASIM PILLAI (DIED), PROPRIETOR,
M/S.SHEEBA RUBBERS, ATTINPURAM, PANVOOR PO,
NEDUMANGAD, NOW ENGAGING.K.MUHAMMED MUSTHAFA,
S/O.S.KASIM PILLAI, RESIDING AT PALAVILA HOUSE,
ATTINPURAM, PANAVOOR PO, NEDUMANGAD.

2. STATE OF KERALA, REPRESENTED BYITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 1186 OF 2006 C

Dated this the 5th day of July, 2007

O R D E R

In this revision filed under section 397 read with section 401 Cr.P.C. the petitioner, who was the 4th accused in C.C. No.299/2004 on the file of the Chief Judicial Magistrate, Kottayam for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, challenges the conviction entered and the sentence passed against him concurrently by the courts below.

2. I heard the learned counsel for the revision petitioner and the learned counsel for the first respondent.

3. The learned counsel appearing for the revision petitioner reiterated the contentions in support of the revision. The courts below have accordingly held that the cheque in question was drawn by the 2nd accused Managing Director on behalf of the first accused firm on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under section 138 of the N.I. Act, that the complainant made a demand for payment by notice in time in accordance with clause (b) to the proviso to section 138 of the N.I. Act and that the

revision petitioner/accused along with the rest of the accused failed to make the payment within 15 days of the date of the statutory notice. These findings have been concurrently recorded by the courts below after an appreciation of an oral and documentary evidence of the case and those findings cannot be interfered with in this revision.

4. The only other point which was submitted by the revision petitioner was the entitlement of K.Muhammed Musthafa, the son-in-law of the original complainant Kasim Pillai, to represent the complainant and to receive the amount of compensation. It is admitted that the original complainant Kasim Pillai who was the holder of the cheque died on 22.8.2001. Mohammed Musthafa came on record by filing a petition presumably under section 302 Cr.P.C. The said petition was not opposed by the revision petitioner and was allowed by the trial court and it was Mohammed Musthafa who continued the prosecution in the place of the original complainant. In the appeal preferred by the revision petitioner also he had impleaded the said Muhammed Musthafa as the first respondent. Hence it is too late in the day for the revision petitioner to contend that the permission given by the trial court to

Mohammed Musthafa to continue the proceedings was illegal. However, I hasten to add that since as per the judgment of the lower appellate court the revision petitioner has been directed to pay the cheque amount of Rs.3,14,707/- as compensation under section 357(3) Cr.P.C. to PW1 Mohammed Musthafa it needs to be observed that the said compensation will have to be received by PW1 as a trustee for and on behalf of the legal heirs of the original complainant E.Kasim Pillai.

5. Now coming to the question of sentence imposed on the revision petitioner, as against the sentence of simple imprisonment for one year and fine of Rs.3,14,707/- and the direction to pay the fine amount as compensation to PW1 ordered by the Chief Judicial Magistrate, the lower appellate court has reduced the sentence to one of imprisonment till rising of the court and to pay the cheque amount as compensation to PW1 under section 357(3) Cr.P.C. The limited request which the revision petitioner made before me was for some time. The learned counsel appearing for the first respondent also conceded that some time can be granted to the revision petitioner to pay the amount. Accordingly, if the revision petitioner pays the cheque

amount of Rs.3,14,707/- to the first respondent PW1 within six months from today, he need only suffer imprisonment till rising of the court. If, however, the revision petitioner fails to pay the compensation amount as aforesaid, he shall suffer simple imprisonment for three months by way of default sentence. It is needless to mention that in the hands of PW1 the compensation amount will be subject to all legitimate claims of the legal heirs of Kasim Pillai, the original complainant. Amounts, if any, deposited by the revision petitioner pursuant to the directions either of the lower appellate court or of this court shall be refunded to him.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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